Cr A Kanara/53
pt II

1953

File No.

Legal DEPARTMENT
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Examined

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Subject:— Criminal appeals in the High court of Bombay against the order of acquittal from kanara District

[For previous ppr. pl. see pr I]

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Cr A Kanara/53
pt II

File No.

Edd. Scott. 8llp 24-B

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Judgment recorded by the High Court in Criminal Appeal No.843 of 1963 (By State) in the case of State Vs. Mahaling Naga Devali.

Mr. Y.V. Chandrachud, Assistant Government Pleader for the State.

Mr. N.M. Hungund, Advocate, (appointed) for the accused.

CORAM : Gajendragadkar & Chainani, JJ.

28th August 1963.

ORAL JUDGMENT (Per Gajendragadkar, J.):-

This is an appeal by the State against the order of acquittal passed by the learned Sessions Judge, Kanara, in favour of the opponent Mahalinga Naga Devali. The case against the opponent was that on the 27th September 1961 at Nilekani he voluntarily caused the death of one Narayan Jattappa by striking him with the aid of a seythe on his abdomen and thereby rendered himself liable to be punished under Section 302. The accused pleaded that he was not guilty of the offence charged. According to him, at the time of the incident Narayan and his friend Subba had gone to his house to spoil Manjamma, who had been brought up by the accused as his own daughter. In fact, she is the daughter of the mistress of the accused and was living with him. The accused stated that Narayan and Subba tried to drag her out of her room and so he went to her rescue. He pushed Narayan aside, whereupon Narayan fell down and his shirt was torn. At this stage Subba came with a knife and handed it over to Narayan. Narayan wanted to enter the house of the accused with the knife. The accused then took his seythe from the tatti and he tried to ward off the knife of Narayan, who was rushing at him with it. The seythe struck Narayan on his abdomen. Narayan and Subba then ran away. The accused then told his mistress and her daughter to go away and he himself went to Venkatray Nilekani's house. There he met Shankar Narayan. The accused told Shankar what

had happened. Shankar advised him to go to the Police Station. Accordingly the accused proceeded to the Police Station and produced the scythe. The learned Judge has accepted this plea and has held that the accused cannot be said to be guilty of the offence of murder because what he did was justified by reason of the fact that he wanted to protect the honour of his adopted daughter.

In the present appeal, Mr. Chandrachud for the State finds himself in a very happy position, because he has asked us to look at the whole of the record to find out whether there is any legal evidence on which the plea of self-defence can be said to be proved. The plea as it is made by the accused is one of the exercise of a right to protect the honour of his adopted daughter. The accused admits that it was his scythe that caused the serious injury to the deceased on his abdomen. In other words, the accused is pleading an exception, and it would be necessary for the accused to prove the exception. Mr. Chandrachud contends that not only has the accused made no attempt to lead evidence in support of his plea, but nothing has been brought out even in the cross-examination of the prosecution witnesses which can in the remotest manner be said to justify the plea of self-defence. We have come to the conclusion that Mr. Chandrachud is substantially right.

The prosecution case was that between Manjamma and Subba intimacy had developed some time before the date of this offence. Manjamma had been married, but her husband had given her up and she had come back to stay with her mother Marli, who was the mistress of the accused. It appears that the deceased was interested in Subba and at Subba's instance the deceased approached the accused, intimated to him about the character of the relationship that had arisen between Subba and his daughter and requested him to get his daughter married to Subba. The accused first refused to comply with this request. According to the ---

the prosecution, the accused had no objection to the continu-
-ance of illicit relationship between Subba and the girl provided some money was paid to the accused. But Subba did not agree and wanted to regularise the relations by marrying the girl. Ultimately the accused asked for Rs.50/-. Subba borrowed it from the deceased and gave it to the accused on the accused promising Subba that he would permit the marriage between Subba and the girl. Though the accused accepted the money, he had no intention of carrying out his promise and he sent the girl away from the village of Nilekani. Next day, when Subba went to inquire where the girl was, the accused said that the girl had left the place and he added that no marriage could take place. Annoyed at this, Subba went back to the deceased and the two together had gone to the house of the accused after evening time. It was then that this offence was committed. According to the prosecu-
-tion, when the accused told Subba and the deceased that the marriage was impossible, the deceased claimed back the amount of Rs.50/- which had been paid to the accused. The accused refused to return the amount and defied the deceased to do whatever he liked. When this conversation took place between the parties, the accused went inside his house, armed himself with a scythe and suddenly assaulted the deceased on the abdomen. As a result of the injury inflicted by the accused in this manner Narayan died.

Now, this story is supported by the evidence of Subba himself and corroborated by Narayan's wife. Besides, we have the dying declaration made by Narayan before a his death. It is true that the dying declaration in some respect is not consistent with the prosecution case and it may be that the place where the attack took place is not accurately described by Narayan in his dying declaration. It may also be that Narayan [illegible] has not set out the reason why the assault on him was made by the accused. But it seems to us difficult to reject the prosecution case which is sworn

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to by Subba and which in material particulars is corroborated by the dying declaration. The difficulty in rejecting the prosecution case is further enhanced by reason of the fact that the accused in clear terms has admitted that he took the scythe and with that scythe the fatal injury to Narayan was caused. That is why we are unable to understand how the learned Judge straightaway proceeded to acquit the accused without considering the material points which arise when a plea of self-defence is made by an accused in such a case. The very plea made by the accused amounts to an admission that it was he who caused the injury. The accused contends that he was justified in causing the injury, and the Court has, therefore, to consider whether the justifying circum--stances are proved. And this the learned Judge has unfor--tunately failed to consider in his judgment altogether. That is why Mr. Chandrachud says that we have merely to consider the evidence to be satisfied that the learned Judge has not addressed himself to the only point which he had to consider in the present case.

In the cross-examination of Subba and the wife of the deceased, no doubt, several questions have been put; but there is nothing on the record to show that this girl was in the house of the accused at the material time. The prosecu--tion alleged that she had been sent away by the accused with a view to avoid the marriage between her and Subba. If the case for the accused was that Manjamma was in the house and that the deceased and Subba attempted to take her away with a view to ravish her, it would have been easy for him to examine Manjamma or his mistress. He has not adopted that course. Besides, in the evidence which has been led by the prosecution there is no indication at all which would reason--ably lead to the inference that Manjamma was in this room. Therefore, in our opinion, the whole theory set up by the accused that he apprehended that Manjamma's honour was at stake and had to be protected must be held not to be ---

established. Besides, even if the deceased had attempted to take away Manjamma, the accused would not be justified in inflicting such a serious injury on the deceased unless it was further shown that Subba gave a knife to the deceased and the deceased was about to use that knife against the accused. In support of this plea again we see no evidence on the record at all. If a plea of this kind is accepted merely because it is made by the accused person, it would make the task of the accused in murder cases very easy indeed In considering such a plea the Court must take into account the evidence available on the record, attending circumstances which may appear from the evidence and the probabilities. It may be that in every case the accused need not cite witnesses of his own. But then there must be some legal evidence which bears out the plea. In our opinion, there is no legal evidence at all in this case which bears out the plea as made by the accused in his defence.

Even so, we do not think it would be safe to convict the accused of the offence of murder. Only one injury has been caused. It is true that it is a serious injury and it proved fatal. But on the prosecution case itself it does appear that there was an exchange of words between the deceased and Subba on the one hand and the accused on the other. The deceased must have been annoyed that the accused had cheated Subba by accepting Rs.50/- on the representation that Subba would be permitted to marry Manjamma and that the accused had gone back upon his promise and had made the performance of marriage very difficult by sending away Manjamma to another place. It is likely that in this context the deceased and Subba may have violently abused the accused and, acting under the provocation given by this abuse, the accused may have suddenly attacked the deceased with a scythe. We do not think in so attacking the deceased the accused intended to cause the death of Narayan. Accordingly, we are disposed to take the view

that the case of the accused in these circumstances would fall under Section 304, Part II, of the Indian Penal Code.

We would, therefore, allow this appeal, set aside the order of acquittal passed by the learned Sessions Judge, convict the accused Mahalinga Naga Devali of the offence punishable under Section 304, Part II, and sentence him to five years' rigorous imprisonment.

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MJT/-

Judgment recorded by the High Court in Criminal Appeal No. 1169 of 1953 (By Government) in the case of State Vs. Dattatraya Nagappa Bhat.

The Government Pleader for the Appellant- the State of Bombay.
Mr. N.M.Shanbhag for Mr. N. S. Anikhindi, Advocate (Appointed) for the Opponent-accused.

(Coram: Gajendragadkar and Vyas,JJ.)

26th November 1953.

Oral Judgment (Per Gajendragadkar, J.):-

This is an appeal against acquittal. The opponent was tried before the Sub-Divisional Magistrate, First Class, Karwar Town, for an offence under section 21(5) of the Trust Act. The complaint against him was filed by the Senior Civil Judge, North Kanara, by virtue of his office as the Rigistrar of Public Trusts in Kanara. The allegation was that, though the accused had been called upon to render accounts of the trust property belonging to Shri Bhadrakali Temple of Gokarn, he had refused to do so. The learned Magistrate took the view that the accused was not liable to be prosecuted under the provisions of the Act because he was not a Manager within the meaning of section 3 sub-section (1) of the Bombay Public Trusts Registration Act, 1935. According to the learned Magistrate, the position of the accused was no better than that of a trespasser and so he held that the charge based on the allegation that he had failed to submit the accounts, though called upon to do so, cannot be filed against a trespasser who enters into possession of trust property. It is this finding which the learned Government Pleader has disputed before us in the present appeal. His argument is that in defining the word "Manager" section 3(1) of Bombay Act 25 of 1935 has deliberately used wider words in order that a de facto Manager should be included within the definition. The learned Government Pleader is prefered to go to the extent of submitting that even if a person acquires wrongfully the possession of trust property and then manages it, he would

fall within the definition of the word "Manager" under section 3(1). On this view, the learned Government Pleader contends that the learned Magistrate was wrong in applying a decision of this Court reported in Nagappa V. Shantappa.40 Bom.L.R. 365, to the facts of this case, In Nagappa's case, the Court was dealing with a suit under section 14 of the Religious Endowments Act, 1863, in which the plaintiff had made a claim against the defendant for misfeasance, breach of trust and neglect of his duty, and it was held that, unless it was shown that the defendant was a validly appointed trustee, no suit under section 14 can be maintained against him. The argument urged before us by the learned Government Pleader is that, in applying this decision to the facts before him, the learned Magistrate overlooked the fact that the words used in section 14 of the Act with which the Court was there concerned are materially different from the words used in section 3(1) of Bombay Act 25 of 1935. It is true that section 14 of the Religious Endowments Act specifically requires that the property should have been vested in or confided to the person who would be liable to be sued under section 14, and in that sense it may be legitimate to contend that the same words are not used in section 3(1). Even so, it is by no means clear that the word "Manager" as defined in section 3(1) would include a trespasser who wrongfully obtains possession of trus property and manages it as its absolute owner.

Mr. Shanbhag has contended that, even in the definition of the word "Manager", the words used are that the person concerned must administer the property of any public trust; and accordint to Mr. Shanbhag, administration of the property of the trust must necessarily import administration validly and lawfully made. As at present advised, we think there is considerable force in this contention. That, however, would not assist Mr. Shanbhag on the facts of this case, because even if we were to hold that a trespasser is Manager within the meaning of section 3(1) of 1988, we do not see how Mr. Sha

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plea which he has now made that he is not a Manager is an after-thought and should not have been accepted by the learned Magistrate. In deciding the interesting point of law which arose before the learned Magistrate, he has, with respect, failed to apply his mind porperly to the facts on which the point ultimately had to be decided. Now, these facts are that the property in question was admittedly trust property until 1943. The uncle of the accused was in management. On his death, the accused himself stepped into the management of the property, as often happens in such cases, on the thory that the trusteeship goes by succession. What is more importan is the fact that, when he was called upon to render accounts of this trust, the accused submitted his accounts for the years 1943, 1944 and 1945, and it is significant that in submitting these accounts he described himself as "Adhalitedar" which can be appropriately traslated as a Manager. It would appear that some time in 1943, another set of trustees were appointed and a dispute has been pending between the accused and the said trustees ever since. It is common ground that the trustees succeeded in obtaining possession of the property from the accused on the 9th December 1949. It may be that the accused was challenging the validity of the appointment of the trustees, and since those pleas are pending between the parties, we understand, in a first appeal in this Court, we do not propose to express any opinion on the merits of that controversy. But the position which arises from the facts in this case is that the accused submitted accounts for the years 1943, 1944 and 1945, described himself as a Manager of the trust property, and it is clear - and indeed there is no dispute about it - that the accused got into possession of this property on the death of his uncle who, in his turn, was in management of the property as a trustee of the public trust. Therefore, if the accused submitted accounts until 1945 as a Manager - and in fact if he took several adjournments even in the present proceedings in order to enable him accounts - we do not see how he can be allowed to say

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plea that he is a trespasser and, as such, not a Manager within the meaning of section 3(1). The original of his management is lawful in that he went into possession of the property by succession after the death of his uncle. The continuance of his management was lawful in that he admitted that he was a Manager and actually rendered accounts until 1945. If that be so, a Manager, or a trustee who is a Manager within the meaning of section 3(1) cannot, merely by taking a hostile attitude sunsequently, absolve himself from the liability which arises by virtue of his position as a Manager. Therefore, in our opinion, on the facts of this case there can be no doubt that the conclusion of the learned Magistrate, that the accused is not shown to be a Manager, is entirely unreasonable. The object of the Act is to protect public charities, and an erroneous finding like the one recorded by the learned Magistrate would obviously defeat the object of protecting public charities.

We must, therefore, set aside the finding of the learned Magistrate and hold that the accused is a Manager within the meaning of section 3(1) and as such he was liable to render accounts.

Mr. Shanbhag attempted to raise before us several points of law against the maintainability of the present complaint. It is unneceasary to refer to those points because we think Mr. Shanbhag would be entitled to raise those points before the learned Magistrate when the case is sent down for hearing.

The appeal is accordingly allowed, the order of acquittal is set aside and the case is sent back to the learned Magistrate for disposal in accordance with law.

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